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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,515	11/24/2003	Steve Stewart	1238U002	5326

41461 7590 09/09/2005

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EXAMINER	
FETSUGA, ROBERT M	

ART UNIT	PAPER NUMBER
3751	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/721,515	STEWART, STEVE	
	Examiner	Art Unit	
	Robert M. Fetsuga	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,10,11,13-16,18 and 19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,10,11,13-16,18 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the subject matter added to the preambles of claims 1, 18 and 19 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

2. Claims 1 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to whether the "toilet" is intended to be part of the claimed combination since structure of the "apparatus" is defined as being connected thereto (lns. 10-11 and 13-14), but no positive structural antecedent basis therefor has been defined. Claim 19 is similarly indefinite.

Applicant argues at page 7 of the response filed August 10, 2005 claim 19 is a method claim and by "nature" is definite in this regard. However, whether substantially identical subject matter is couched in both "-ing" terms as in claim 19 and in terms of elements as in claim 1, would not appear to distinguish what is intended to be excluded from the public. Furthermore,

applicant has not provided any evidence to support this argued position.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 5-7, 13-16, 18 and 19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Knudsen.

The Knudsen reference (Figs. 1-4) discloses an apparatus comprising: a first bracket (left side of 11); a second bracket (right side of 11); a first geared 35 shaft 34; a second geared 37 shaft 38; a flange 13; a right end lever 12 including a foot pedal 32; a floor (Fig. 1); a plate 15; a bushing (col. 2 lns. 58-59); a toilet seat 24; a toilet cover 25; a toilet including a tank (col. 3 ln. 53); and a cover 11, as claimed. Re claims

1, 18 and 19, since the brackets of Knudsen are not disposed at the same point on a bowl, they inherently would be on a "left side" and "right side" thereof. Furthermore, the Knudsen toilet would include a bowl and a tank oriented as recited in the respective claim preambles.

To the extent the argument at pages 7-9 of the response can be attributed to any particular claim(s), the following observations are made. Applicant argues at pages 7-8 of the response Knudsen teaches placement of first and second brackets only on either a left side or a right side of a toilet bowl as discussed at column 1, lines 51-55. The examiner can not agree as the noted passages in Knudsen merely state the apparatus can be modified for mounting on either a right side or left side of a bowl. The broad language of claims 1, 18 and 19 does not distinguish this disclosure in Knudsen. Applicant argues at page 8 of the response the term "geared shaft" defines structure distinguishable from a gear mounted on a shaft. The examiner can not agree, and notes applicant has not provided any evidence in support of this position.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudsen and Alberts.

Although the lever of the Knudsen apparatus does not include upper and lower portions, as claimed, attention is

directed to the Alberts reference which discloses an analogous apparatus which further includes a lever 14 having upper 17a and lower 17 portions. Therefore, in consideration of Alberts, it would have been obvious to one of ordinary skill in the art to associate upper and lower portions with the Knudsen apparatus in order to enable length adjustment of the lever.

Applicant has not substantively argued this ground of rejection.

6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudsen.

The choice of gear ratio would appear an obvious choice to be made depending upon desired seat movement speed.

Applicant has not substantively argued this ground of rejection.

7. Applicant's remaining remarks have been fully considered and either have been previously addressed or are not deemed persuasive in view of the prior art as specifically applied in light of the level of skill in the pertinent art.

8. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.

Robert M. Fetsuga
Primary Examiner
Art Unit 3751